

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

National Tobacco Company, L.P.,

Plaintiff,

-against-

Timothy Parker and Xavier Mosley, p.k.a.  
Blackalicious, Raymond Riley, p.k.a. Boots  
Riley, Solomon David and Marlon Irving,  
p.k.a. Lifesavas,

Defendants.

ECF Case

08-CV-03383 (SAS)

**DECLARATION OF WINIFRED CHANE IN  
SUPPORT OF PLAINTIFF'S OPPOSITION TO  
DEFENDANTS' MOTION TO DISMISS FOR  
IMPROPER VENUE AND FORUM NON  
CONVENIENS**

I, Winifred Chane, declare as follows:

1. I am Director of Marketing of The CMJ Network, Inc., which acts as an agent for defendant National Tobacco Company, L.P. ("NTC") and runs NTC's Zig-Zag® Live ("ZigZagLive") promotions. I work in CMJ's New York, New York headquarters. I have personal knowledge of the matters set forth herein, and, if called as a witness, I could and would testify competently thereto.

2. In 2006, NTC, as part of the ZigZagLive tour and through its agent CMJ, entered into an agreement with Phoenix Media/Communications Group, a Massachusetts corporation ("Phoenix Media") to sponsor (along with other sponsors) a music festival in Boston, Massachusetts in May 2006 called the Phoenix Best Music Poll 2006 ("Phoenix 2006"). Phoenix 2006 was organized and publicized by Phoenix Media, which includes the Boston Phoenix newspaper and its affiliated radio stations.

3. On behalf of NTC, I negotiated the sponsorship contract with my contact at Phoenix Media, Kate Iannotti, who worked in Phoenix Media's Massachusetts offices. I signed the sponsorship contract with Phoenix Media by which NTC became a sponsor of Phoenix 2006 from New York, NY, and transmitted it to Phoenix Media at its offices in Massachusetts. A true

copy of the sponsorship contract is attached as Exhibit A.

4. I understand that Blackalicious was one of the bands that performed at Phoenix 2006. A true copy of one of Phoenix Media's promotional pages for Phoenix 2006 showing ZigZagLive as a sponsor and Blackalicious as a performer at the sponsored event is attached as Exhibit B.

5. Phoenix Media provided to CMJ all of the artist information – including biographical information, photos, website links, blog entries and show reviews – for the artists that performed at Phoenix 2006, including Blackalicious. All information on Blackalicious that was posted on the ZigZagLive website was obtained from Phoenix Media in Massachusetts or Rhode Island and provided to CMJ in New York, as agent for NTC.

6. I understand that the artist information from Phoenix Media was provided to Phoenix Media by the artists or their agents or managers as approved information for use in promotion and media.

7. The blog entries and reviews regarding Blackalicious that were posted on the ZigZagLive website related to Blackalicious's performance at Phoenix 2006 in Boston, Massachusetts.

8. I am not aware of any complaint until late March, 2008 by Blackalicious concerning the ZigZagLive website's content concerning Blackalicious, which included a review of Blackalicious's performance at Phoenix 2006 along with a photo of Blackalicious and a link to Blackalicious's website.

9. I attended NTC-sponsored ZigZagLive Tour concerts in November 2007 in New York, New York, and Boston, Massachusetts at which the band Galactic featuring Boots Riley and Lifesavas performed.

10. At the end of the shows, Boots Riley spent significant time speaking with ZigZagLive marketing representatives at a ZigZag Live table. The table included a number of items prominently featuring the Zig-Zag® brand, such as t-shirts, posters, and cigarette paper products. ZigZagLive marketing representatives at the shows provided both Boots Riley and

Lifesavas with lots of Zig-Zag® branded merchandise free of charge. Boots Riley and Lifesavas accepted the merchandise, and did not complain of the affiliation with Zig-Zag®.

11. I spoke with Boots Riley and Lifesavas at the Boston show and told them that ZigZagLive would like them to sign posters bearing the ZigZagLive logo, and that the posters would be given out to winning entrants who provided their e-mail addresses to ZigZagLive and then replied to the ZigZagLive internet marketing e-mail. Attached hereto as Exhibit C are true copies of posters signed by Boots Riley and Lifesavas.

12. Not only did I tell Boots Riley and Lifesavas that the posters they were providing would be given away through ZigZagLive internet marketing, I did so while standing by the ZigZagLive promotional table. Attached hereto as Exhibit D are true copies of photographs of the members of Lifesavas socializing at, and autographing posters with the ZigZagLive logo at, the promotional table at the Boston and New York shows. The ZigZagLive internet marketing e-mail promotion to which I refer in the previous paragraph is visible in one of the photographs.

13. I also gave out Zig-Zag® branded merchandise to Defendants while they were at the table. Both Boots Riley and Lifesavas told me that they thought ZigZagLive was a good sponsor for the shows and were very enthusiastic about the promotion, spending a significant amount of time at the ZigZagLive table and signing a lot of posters.

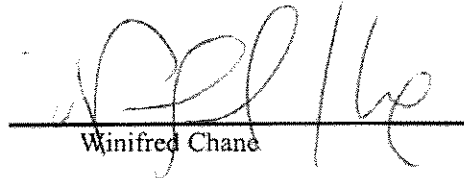
14. One item displayed at the ZigZagLive tables at the events was a ZigZag Live branded guitar to be given away through a sweepstakes entered through the ZigZagLive website. During his visits with ZigZagLive marketing personnel at the shows, Boots Riley repeatedly requested that he be provided with a ZigZagLive guitar. He asserted the fact that he was playing on the ZigZagLive tour as a good reason to give him the guitar. The guitar is visible in some of the photographs attached as Exhibit D.

15. Neither Boots Riley nor the members of Lifesavas ever complained to me about sponsorship by or affiliation with ZigZag Live at the events, and I am not aware that they made any complaints regarding ZigZagLive's sponsorship before late March 2008.

16. Accordingly, it is not credible to me that the defendants claim that they did not

approve of ZigZagLive using their names and likenesses or that they only "discovered" ZigZagLive's use of their names and likenesses in 2008.

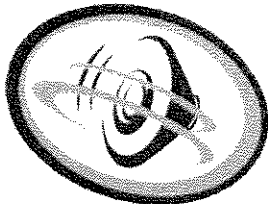
I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was executed on June 19, 2008 at New York, New York.

  
Winifred Chané

# EXHIBIT

# A

## **THE EIGHTEENTH ANNUAL 2006 FNX/PHOENIX BEST MUSIC POLL**



**BEST MUSIC POLL**

**THE  
PHOENIX**

**101.7  
FNX  
TRUE ALTERNATIVE**

### **ASSOCIATE SPONSORSHIP**

**FNX Radio Network - :30 Promotional Announcements April-May (5 weeks):**

125x on 101.7 WFNX (Boston, MA)

125x on 92.1 WFEX (Manchester, NH)

**Value: \$17,000**

**Boston Phoenix Print Promotional Support April-May (4 weeks):**

Total Number of Phoenix ads with logo exposure:

4 full-page ads in The Boston Phoenix

**Value: \$19,000**

**Online at [www.the phoenix.com](http://www.the phoenix.com) and [www.fnxradio.com](http://www.fnxradio.com):**

Sponsors receive logo placement on the pages along with a link back to your site for a two-month period.

**Value: \$6,600**



**Signage/Event Marketing**

Up to eight (8) 3'x5' Banner @ Best Music Poll in Boston (Lansdowne Street)

Booth space @ Best Music Poll in Boston (Lansdowne Street)

Signage as sponsor of one of the club shows on Lansdowne Street

**Value: \$7,500**

**VIP Party**

Associate Sponsors receive 6 VIP invitations to Lansdowne Street show (5/18) and Bank of America Pavilion (5/25)

**Value: \$3,000**

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**BMP SPONSORSHIP VALUE: \$55,000**

(continued)

**ADDED VALUE TO PROMOTE:**



**Boston Phoenix Print Advertising (circulation: 157k)**

Four (4) Eighth page ads promoting ZigZagLive.com in the Music & Clubs Listings (4c if available)

Two (2) Quarter-page 4c ads to promote the May and June shows

**Value: \$17,808**

**Online at [www.thephoenix.com](http://www.thephoenix.com):**

50k impressions per month to promote the May and June shows

Target our LISTINGS section – the most popular part of our site

**Value: \$2,500**

Dedicated Email Blast to Phoenix.com subscribers (10k):

**Value: \$1,200**

Enter-to-win ticket give-away

**Value: \$1000**

**Additional 25k impressions for May – can start immediately**

**Phoenix Street Team Guerilla Marketing:**

**LANSDOWNE STREET (5/18):**

**One (1) Table** on Lansdowne Street – giving away hats, t-shirts, etc. and collecting email addresses for ZigZagLive.com

**One (1) Table** in the lobby of Avalon – giving away hats, t-shirts, etc. and collecting email addresses for ZigZagLive.com

**At least one (1) person** roaming Lansdowne Street during the show – giving away hats, t-shirts, etc. and collecting email addresses for ZigZagLive.com

**TOTAL: 3-6 people**

**BANK OF AMERICA PAVILION (5/25):**

**At least one (1) person** roaming BOA during the show – giving away hats, t-shirts, etc. and collecting email addresses for ZigZagLive.com

**TOTAL: 1-2 people**

**Value: \$1000**

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**TOTAL VALUE: \$78,508**

**SPONSOR INVESTMENT: \$10,000 (net) (net 30 to pay)**

*[Handwritten signature]*

*5.03.06*

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**Authorized By:**

**Date: 5/1/2006**

Winifred Chane

The CMJ Network

151 West 25<sup>th</sup> Street, 12<sup>th</sup> Floor

New York, NY 10001-7204

Phone: (917) 606-1908 x245

Fax: (917) 606-1914

# **EXHIBIT**

# **B**

*Budweiser* 1017 WFNX & THE BOSTON PHOENIX PRESENT  
THURSDAY MAY 18<sup>TH</sup>

**BEST MUSIC POLL 2006**

**THE CHARLATANS UK**

**THE ACADEMY IS SECRET MACHINES**

**OK GO! • NADA SURF**

**ELEFANT**

**ROCK KILLS KID**

**BLACKALICIOUS**

**MC LARS**

**DAMONE TAXPAYER**

**ABERDEEN CITY**

**DEAR LEADER**

**LANSDOWNE STREET**

**AVALON • AXIS**

**BILL'S BAR**

**TICKETS \$25**

**GATES AT 5PM**

**BOSTON'S LARGEST STREET FESTIVAL**

**AGENTS ARE HERE! CAPACITY PERMITTING**

**PART 2: THURSDAY MAY 25<sup>TH</sup>**

**WATTS SAHU**

**ATMOSPHERE**

**APOLLO SUNSHINE**

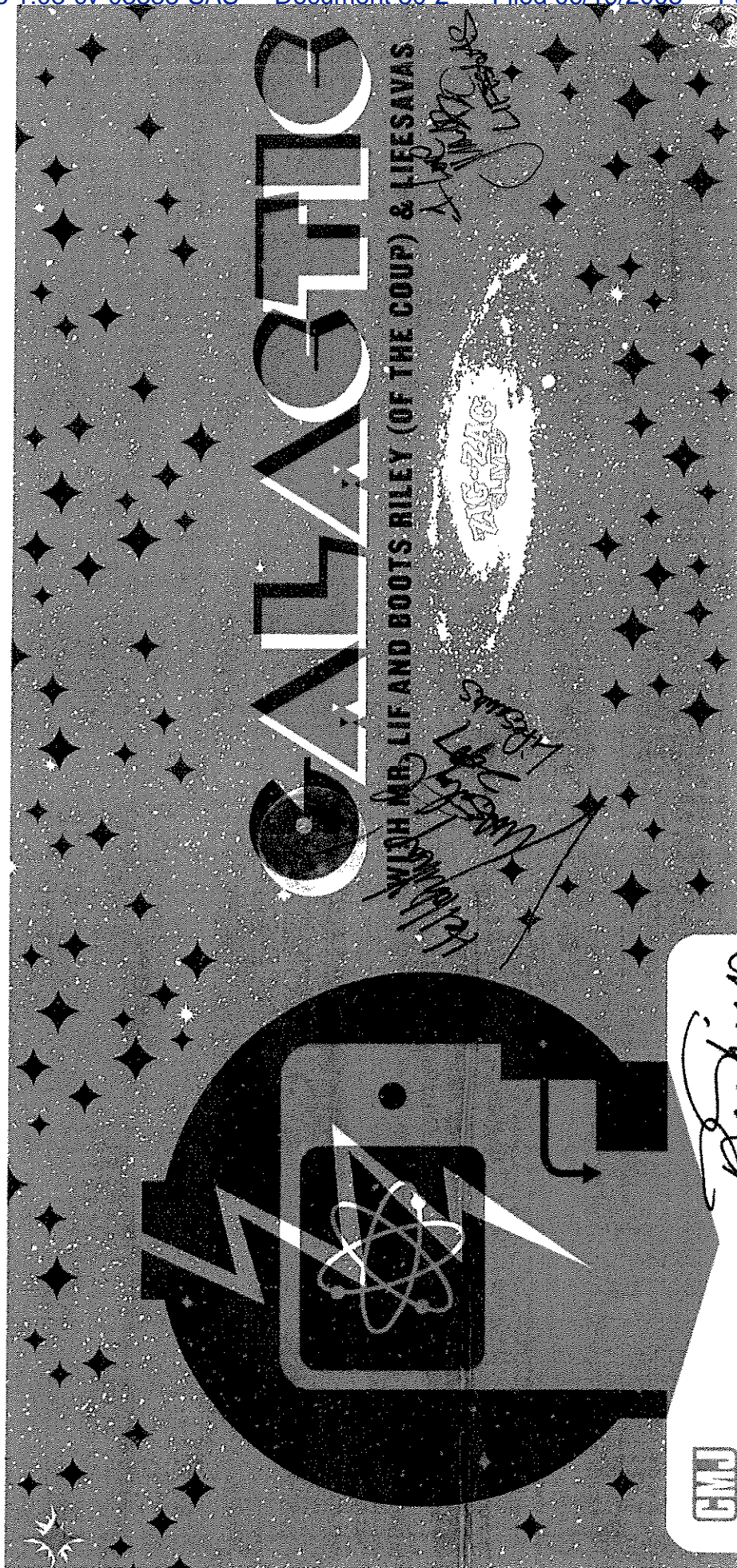
**BANK OF AMERICA PAVILION**

**GATES AT 6:30 PM • TICKETS \$32**

**TICKET INFO:** TICKETS FOR SALE NOW. TICKETS FOR EACH NIGHT SOLD SEPARATELY. TICKETS AVAILABLE AT INDIANAPOLIS BOX OFFICE, TICKETMASTER LOCATIONS, TICKETMASTER.COM OR CALL 877-228-6000. TICKETS FOR MAY 18/19 STREET FESTIVAL AT LANSDOWNE ST. NIGHT OF 25<sup>TH</sup> ONLY.

**BEST BUY** **Snapple** **Estimote** **Budweiser** **BOB'S Discount FURNITURE** **1-800-723-BOSS** **WWW.BOBSD.COM** **NEW ENGLAND DODGE DEALERS** **Long's** **THE ZAG**

# EXHIBIT C



CMJ

11.02.07 - GEORGIA THEATRE - ATLANTA, GA 11.06.07 - THE COUP THEATRE - BALCON, NC 11.17.2007 - ROSELAND BALLROOM - NEW YORK, NY 11.18.07 - PARADISE ROCK CLUB - BOSTON, MA - PLUS SPECIAL GUEST CHALI 2NA (OF JURASSIC 5)

# CLAGS

WITH MR. LEF AND BOOTS RULEY (OF THE CUP) & LIFESAVES

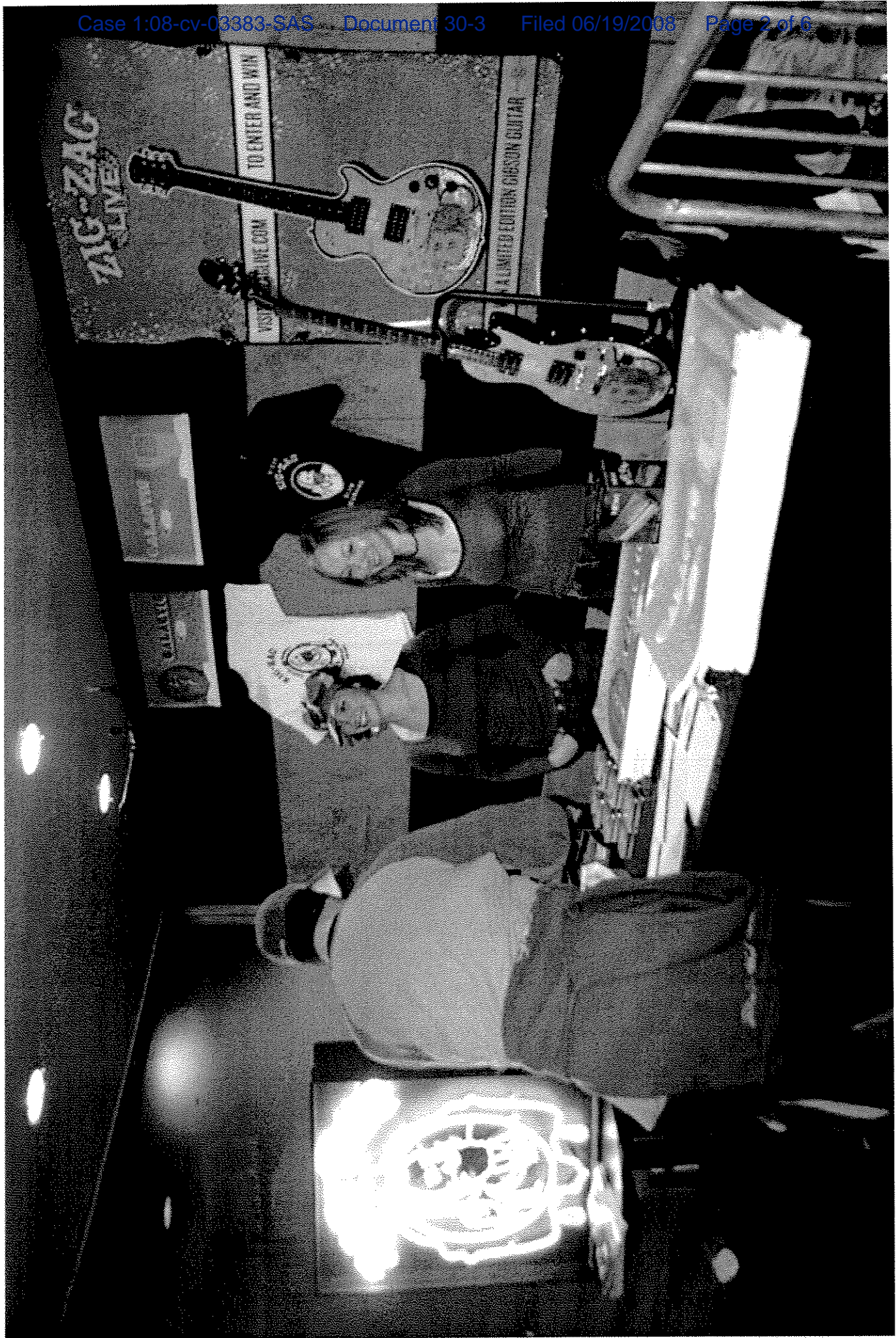
NYC  
TAC-2  
LIVE  
That Number  
PGTS

~~SECRET~~

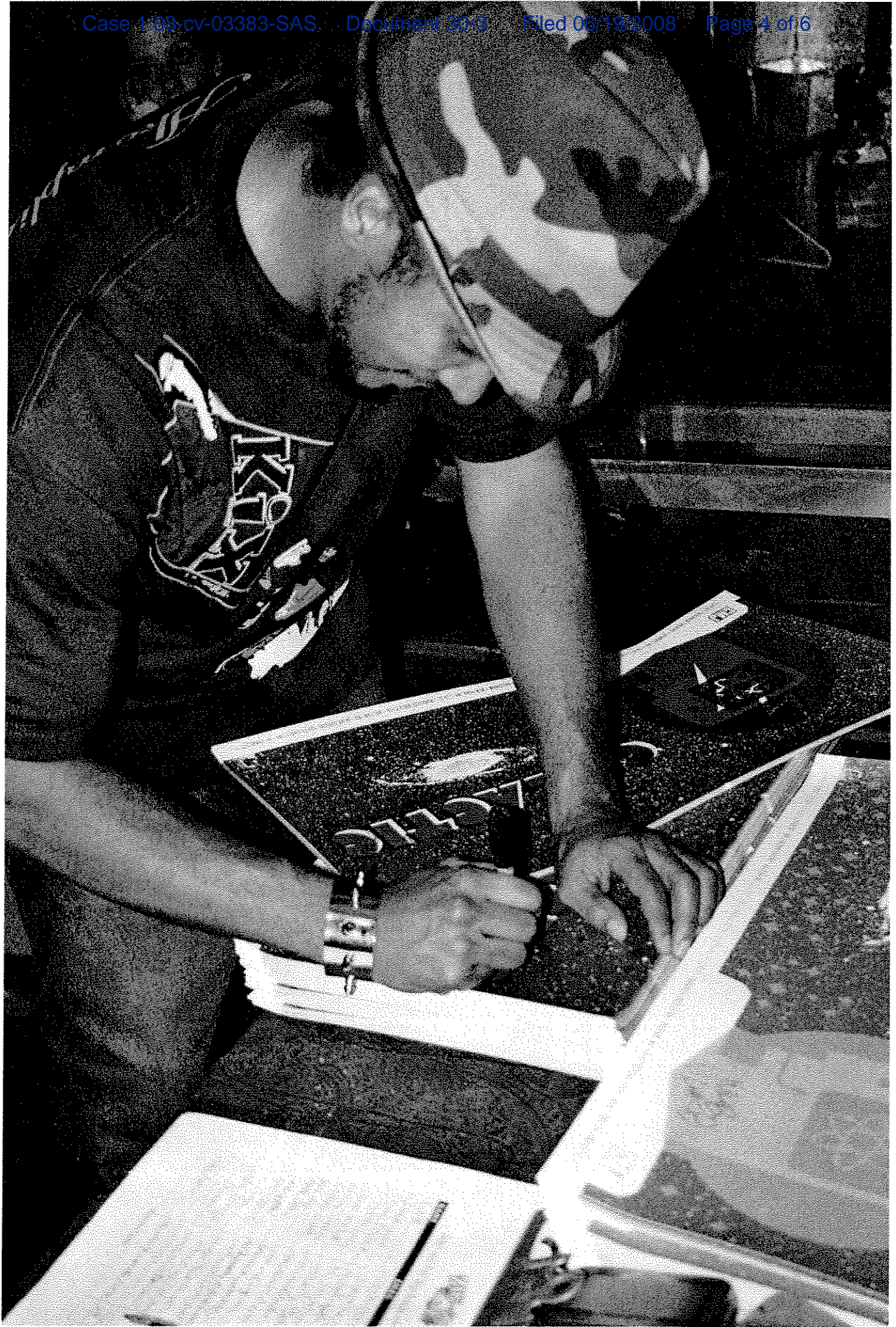



# **EXHIBIT**

# **D**







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